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GUARRIELLO EXAMINER

ART UNIT 1771	PAPER NUMBER
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05/24/00

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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/128721

Applicant(s)

Carroll

Examiner

John Guarnello

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/27/1999
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-25 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-25 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 1-9, 11-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 1, it is not clear what encompasses the phrases “achieving at least about 25% improvement in puncture resistance and at least about 25% improvement in flex crack resistance” regarding the comparisons on uncoated fabric or coated fabric, clarify.

In claim 1, it is not clear what the phrase “one side of” means since there is no description of the number of layers, or to what layer the term “coated” applies, clarify.

In claim 1, line 3, it is not clear what “molecular weight range” is being referenced, since in the polymer art Molecular weight is referred to as weight average molecular weight, number average molecular weight, or some other recognized standard which is clearly defined in the polymer art, clarify. This is noted because if the “molecular weight” is critical to the claimed invention then it must be identified as to what kind of “molecular weight” in terms of the above recognized distinctions in the polymer art, clarify.

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In claim 2, line 6, it is not clear what the phrase “ and the like” means since there is no specificity in the specification as filed, clarify.

In claim 3, lines 2 and 3, the Markush group is improper because it is stated as “selected from the group consisting essentially of “, Markush group language is : “selected from the group consisting of “, clarify. Moreover, the Markush group must be “and” not “or”.

In claim 8, line 1, “the seams” lack antecedent basis with claim 1.

In claim 15, line 2, it is not clear what the “comprised” language means since this appears to be a Markush group regarding “polypropylene, polyethylene copolymers”, clarify scope.

In claim 18, lines 2 and 3, lines 6 and 7 the phrase “the like” is not clear and the Markush group is improper for the reasons given as in claim 2.

In claim 19, lines 2 and , 4, “or” is not clear, the Markush group is improper for the reasons given as in claim 3.

17. Claims 1-5 contain the trademark/trade name “Surlyn”. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or

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trade name. In the present case, the trademark/trade name is used to identify/describe "one stratum" and, accordingly, the identification/description is indefinite.

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 1-9, 11-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langley 4,833,010.

Langley '010 teaches a multilayer chemical barrier fabric made of a base sheet of non-woven polypropylene laminated on one side to a multilayer film sheet having a film of ethylene vinyl alcohol sandwiched between films of nylon with a surface film of linear-low density polyethylene, (see abstract). '010 teaches an outer film of liner-low density polyethylene, (column 3, lines 22-31). Langley teaches film thickness of three mils, (column 3, lines 23-24). Langley differs from the claimed invention because it is silent about the coating of the thermoplastic polyolefin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Langley '010 regarding the outer film which can be considered a polyolefin coating of thermoplastic film to modify Langley regarding the outer film layer coating

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of the thermoplastic polyolefin motivated with the expectation that the outer film coating of the thermoplastic film of Langley '010 would enhance the chemical barrier fabric with increased improvement for durability since discovering the optimum ranges involves only routine skill in the art, In re Aller, 105 USPQ 233. Regarding claims 12, and 14 it would be obvious in this art to substitute polypropylene for polyethylene. Regarding claims 8, 9, Langley teaches, (column 2, lines 32-50) that heat sealing methods can be used to make garments. Furthermore it would be within the skill of the artisan to optimize the slit in the fabric to give seams as in In re Aller. Regarding the pvc/cpe alloy one of skill could routinely optimize the use of alloy since '010 teaches similar kinds, (column 3, lines 40-46).

20. Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Langley 5,948,708, 4,855,178 vapor protection suit which is a multilayer composite. Adiletta 4,865,903 teaches chemically resistant structures and garments. Hauer teaches composite chemical barrier fabric, 5,626,947.

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22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Fridayt from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris , can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



John J. Guarriello:gj

Patent Examiner

March 23, 2000

April 4, 2000

May 22, 2000



BLAINE COPENHEAVER
PRIMARY EXAMINER